IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

RONALD KUIPER and CONLEY KUIPER, Plaintiffs, vs. GIVAUDAN FLAVORS CORP., Defendant.	No. C 06-4009-MWB **JURY INSTRUCTIONS**

TABLE OF CONTENTS

INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, before the lawyers make their opening statements, I am giving you these instructions to help you better understand the trial and your role in it. Consider these instructions, together with all written and oral instructions given to you during or at the end of the trial, and apply them as a whole to the facts of the case.

As I explained during jury selection, this is a civil lawsuit involving claims by plaintiffs Ronald Kuiper and his wife, Conley Kuiper, against defendant Givaudan Flavors Corporation for damages for a lung injury to Ronald Kuiper allegedly caused by inhaling fumes from butter flavorings made by Givaudan and used by Kuiper's employer, American Pop Corn Company, to make microwave popcorn, and damages for the resulting injury to Ronald Kuiper's relationship with his wife, Conley. Givaudan denies the Kuipers' claims and asserts various defenses.

The Kuipers' claims and Givaudan's defenses each consist of one or more "elements," which the party asserting that claim or defense must prove in order to win on that claim or defense. In these Instructions, I will explain the elements of the Kuipers' claims and Givaudan's defenses. Unless I tell you otherwise, you must decide whether a party has proved a claim or a defense without regard to any other claim or defense. I will determine the effect of your determinations on these claims and defenses.

It will be your duty to decide from the evidence what the facts are. You will find the facts from the evidence. You are the sole judges of the facts, but you must

follow the law as stated in these instructions, whether you agree with it or not. You have been chosen and sworn as jurors in this case to try the issues of fact presented by the parties. Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I will give it to you in these Instructions.

This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar stations in life. The mere fact that defendant Givaudan is a business entity does not mean that you should give Givaudan any greater or lesser consideration. All persons, including the Kuipers and Givaudan, stand equal before the law and are entitled to the same fair consideration by you. When a business entity, such as Givaudan, is involved, however, that business entity may act only through natural persons, such as its employees, as its agents.

Although you must follow my Instructions, you should not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. Therefore, if I ask questions of witnesses during the trial, do not assume that I have any opinion on the matters to which my questions relate.

Before explaining the elements of the Kuipers' claims and Givaudan's defenses, I must explain some preliminary matters, including the applicable burden of proof, what is evidence, and credibility of witnesses.

INSTRUCTION NO. 2 - BURDEN OF PROOF

In these Instructions, you are told that your verdict depends on whether you find that certain facts have been proved. The burden is upon the party asserting a claim or defense to prove the facts that establish that claim or defense.

Unless I tell you otherwise, the burden of proof in this case is proof "by the greater weight of the evidence." This burden of proof is sometimes called "the preponderance of the evidence." To prove something "by the greater weight of the evidence" means to prove that it is more likely true than not true. The "greater weight of the evidence" is determined by considering all of the evidence and deciding which evidence is more believable. If, on any issue in the case, you find that the evidence is equally balanced, then you cannot find that the issue has been proved. The "greater weight of the evidence" is not necessarily determined by the greater number of witnesses or exhibits a party has presented. The testimony of a single witness that produces in your mind a belief in the likelihood of truth is sufficient for proof of any fact and would justify a verdict in accordance with such testimony. This is so, even though a number of witnesses may have testified to the contrary, if, after consideration of all of the evidence in the case, you hold a greater belief in the accuracy and reliability of that one witness.

You may have heard of the term "proof beyond a reasonable doubt." That is a stricter standard, which applies in criminal cases. It does not apply in civil cases such as this. Therefore, you should put it out of your minds.

INSTRUCTION NO. 3 - DEFINITION OF EVIDENCE

Your verdict must be based only on the evidence presented in this case and these and any other instructions that may be given to you during the trial. Evidence is the following:

1. Testimony.
2. Exhibits that are admitted into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be "direct" or "circumstantial." The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony that I tell you to disregard.
4. Anything that you see or hear about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the

weight of the evidence is not determined merely by the number or volume of documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict the witness's testimony. Also, you are free to disbelieve the testimony of any or all witnesses. The quality and weight of the evidence are for you to decide.

INSTRUCTION NO. 4 - CERTAIN KINDS OF EVIDENCE

Depositions

Certain testimony from a "deposition" may be put into evidence. A deposition is testimony taken under oath before the trial and preserved in writing or on video. Consider that testimony as if it had been given in court.

Interrogatories

During this trial, you may hear the word "interrogatory." An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

Stipulated Facts

The plaintiffs and the defendant have agreed or "stipulated" to certain facts and have reduced these facts to a written agreement or stipulation. Either counsel may, at any time during the trial, read to you all or a portion of the stipulated facts. You should treat stipulated facts as having been proved.

INSTRUCTION NO. 5 - CREDIBILITY

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the general reasonableness or unreasonableness of the testimony, and the extent to which the testimony is consistent or inconsistent with any other evidence. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters in that field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the

soundness of the reasons given for the opinion, the acceptability of the methods used, any reason that the expert may be biased, and all of the other evidence in the case.

A person who is not an expert may also give an opinion, if that opinion is rationally based on the witness's perception. You may give an opinion of a non-expert witness whatever weight, if any, you think it deserves, based on the reasons and perceptions on which the opinion is based, any reason that the witness may be biased, and all of the other evidence in the case.

If earlier statements of a witness are admitted into evidence, they will not be admitted to prove that the contents of those statements are true, unless I tell you otherwise. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and, therefore, whether they affect the credibility of that witness.

INSTRUCTION NO. 6 - PROXIMATE CAUSE

Each of the Kuipers' claims and each of Givaudan's comparative fault defenses requires proof by the greater weight of the evidence that the conduct at issue in that claim or defense was a "proximate cause" of damage to the plaintiffs. The conduct at issue was a proximate cause of damage if it was a substantial factor in producing damage and if the damage would not have happened except for that conduct. "Substantial" means that the conduct had such an effect in producing damage as to lead a reasonable person to regard it as a cause.

INSTRUCTION NO. 7 - THE KUIPERS' CLAIMS: IN GENERAL

The Kuipers assert various claims against Givaudan: That Givaudan defectively designed its butter flavorings containing diacetyl; the Givaudan failed to warn of the hazardous health effects of its butter flavorings containing diacetyl; that Givaudan failed to test for the hazardous health effects of its butter flavorings containing diacetyl; and that the injuries to Ronald Kuiper from Givaudan's wrongful conduct caused damage to his relationship with his wife, Conley. Unless I tell you otherwise, you must determine whether the Kuipers have proved each claim without regard to any other claim or any defense by Givaudan. I will determine the effect of your determinations on each of Givaudan's defenses on the Kuipers' claims.

INSTRUCTION NO. 8 - PLAINTIFFS' CLAIMS: DEFECTIVE DESIGN

The Kuipers' first claim is that the butter flavorings sold by Givaudan were defectively designed. Givaudan denies this claim.

In order to recover on this "defective design" claim, the Kuipers must prove all of the following elements by the greater weight of the evidence:

***One*, Givaudan sold or distributed butter flavorings containing diacetyl.**

***Two*, Givaudan was engaged in the business of selling or distributing butter flavorings.**

***Three*, the butter flavorings were in a defective condition at the time that they left Givaudan's control.**

> The plaintiffs must prove that the butter flavorings were defective because they contained diacetyl.

***Four*, a reasonable alternative safer design existed at the time of sale or distribution of Givaudan's butter flavorings containing diacetyl.**

> To prove that a reasonable alternative safer design existed at the time of the sale or distribution, the plaintiffs must prove the following: (a) that an alternative design was practical at the time of the sale or distribution of Givaudan's butter flavorings containing diacetyl; (b) that the alternative design would have reduced or avoided the foreseeable risks of harm posed by Givaudan's butter flavorings containing diacetyl; (c) that omission of the alternative design rendered Givaudan's butter flavorings not reasonably safe; and (d) that the alternative design would have reduced or prevented the plaintiffs' harm.

To determine whether a reasonable alternative safer design existed, you may consider the following factors and their interaction: (a) the probability and magnitude of the foreseeable risks of harm from Givaudan's butter flavorings; (b) any instructions or warnings accompanying Givaudan's butter flavorings; (c) consumer expectations about performance of butter flavorings; (d) the dangers attendant on use of Givaudan's butter flavorings; (e) whether the risk presented by butter flavorings containing diacetyl was open and obvious to, or generally known by, foreseeable users; (f) the technological feasibility and practicality of the alternative design; (g) whether the alternative design could be implemented at a reasonable cost; (h) the relative advantages and disadvantages of butter flavorings as designed and as they could have been alternatively designed; (i) the likely effects of the alternative design on longevity, flavor, esthetics, and utility of butter flavorings; (j) the range of consumer choice among similar products, with and without the alternative design; (k) the overall safety of butter flavorings with and without the alternative design and whether the alternative design would introduce other dangers of equal or greater magnitude to those posed by butter flavorings containing diacetyl; (l) the custom and practice in the industry and how Givaudan's design compared with other competing products in actual use; and (m) any other factor shown by the evidence to have some bearing on this question.

***Five*, the design defect was a proximate cause of Ronald Kuiper's damages.**

"Proximate cause" was defined for you in Instruction No. 6.

If the greater weight of the evidence does not prove all of these elements, then you must find in favor of Givaudan on the Kuipers' "defective design" claim. On the other hand, if the greater weight of the evidence does prove all of these elements, then you must consider the Kuipers' claim for "damages" for "defective design," as damages are explained in Instructions Nos. 12, 13, and 14.

INSTRUCTION NO. 9 - PLAINTIFFS' CLAIMS: FAILURE TO WARN

The Kuipers' second claim is that Givaudan failed to warn about the hazardous health effects of its butter flavorings. Givaudan denies this claim.

In order to recover on this "failure to warn" claim, the Kuipers must prove all of the following elements by the greater weight of the evidence:

***One*, Givaudan sold or distributed butter flavorings containing diacetyl.**

***Two*, Givaudan was engaged in the business of selling or distributing butter flavorings.**

***Three*, the foreseeable risks of harm posed by Givaudan's butter flavorings containing diacetyl could have been reduced or avoided by the provision of reasonable instructions or warnings.**

> The Kuipers contend that the foreseeable risks of harm posed by Givaudan's butter flavorings containing diacetyl could have been reduced or avoided by the provision of one or more of the following reasonable instructions or warnings: (a) adequate warnings on the butter flavoring containers of the dangers of inhalation of butter flavorings; (b) adequate instructions on the butter flavoring containers for safe use of the butter flavorings; (c) adequate warnings on the Material Safety Data Sheets of the dangers of inhalation of butter flavorings; (d) adequate instructions on the Material Safety Data Sheets for the safe use of butter flavorings.
>
> You must decide whether any instructions or warnings actually given by Givaudan were adequate, and if not, whether providing adequate instructions or

> warnings would have been reasonable and whether such instructions or warnings would have reduced or avoided the foreseeable risks of harm posed by Givaudan's butter flavorings containing diacetyl. A supplier of a product has a duty to warn the user of the product following sale or distribution, under the following circumstances: (a) the supplier knows or should reasonably know that the product poses a substantial risk of harm to persons or property; (b) the supplier can identify those to whom a warning should be provided and it may reasonably be assumed those persons are unaware of the risk of harm; (c) a warning can be effectively communicated to and acted on by those to whom a warning might be provided; and (4) the risk of harm is sufficiently great to justify the burden of providing the warning. Under these circumstances, the supplier has a duty to exercise reasonable care to inform the user of the product of the dangerous condition or of the facts that make it likely to be dangerous.

***Four*, the omission of one or more of the adequate instructions or warnings rendered Givaudan's butter flavorings containing diacetyl not reasonably safe.**

> The failure to exercise reasonable care to inform the user of the product of the dangerous condition or of the facts that make it likely to be dangerous renders a product not reasonably safe.

***Five*, the risk to be addressed by such adequate instructions or warnings was not obvious to, or generally known by, foreseeable product users.**

***Six*, the omission of one or more of the adequate instructions or warnings was a proximate cause of Ronald Kuiper's damages.**

"Proximate cause" was defined for you in Instruction No. 6.

If the greater weight of the evidence does not prove all of these elements, then you must find in favor of Givaudan on the Kuipers' "failure to warn" claim. On the other hand, if the greater weight of the evidence does prove all of these elements, then you must consider the Kuipers' claim for "damages" for "failure to warn," as damages are explained in Instructions Nos. 12, 13, and 14.

INSTRUCTION NO. 10 - PLAINTIFFS' CLAIMS: FAILURE TO TEST

The Kuipers' third claim is that Givaudan failed to test for the hazardous health effects of its butter flavorings. Givaudan denies this claim.

In order to recover on this "failure to test" claim, the Kuipers must prove all of the following elements by the greater weight of the evidence:

***One*, Givaudan sold or distributed butter flavorings containing diacetyl.**

***Two*, Givaudan was engaged in the business of selling or distributing butter flavorings.**

***Three*, the foreseeable risks of harm posed by Givaudan's butter flavorings containing diacetyl could have been reduced or avoided by adequate testing to ascertain harmful effects.**

> A supplier has a duty to exercise reasonable care to test a product adequately to ascertain harmful effects when the product is used in reasonably foreseeable ways. You must determine whether Ronald Kuiper used Givaudan's butter flavorings in a reasonably foreseeable way, whether testing for harmful effects of use of butter flavorings containing diacetyl in the way that Ronald Kuiper used them would have been reasonable, and whether such testing would have reduced or avoided the foreseeable risks of harm posed by Givaudan's butter flavorings containing diacetyl.

***Four*, the failure to test rendered Givaudan's butter flavorings containing diacetyl not reasonably safe.**

> The failure to test a product adequately to ascertain harmful effects when the product is used in reasonably foreseeable ways renders a product not reasonably safe.

***Five*, the risk to be addressed by such testing was not obvious to, or generally known by, foreseeable product users.**

***Six*, the failure to test was a proximate cause of Ronald Kuiper's damages.**

> "Proximate cause" was defined for you in Instruction No. 6.

If the greater weight of the evidence does not prove all of these elements, then you must find in favor of Givaudan on the Kuipers' "failure to test" claim. On the other hand, if the greater weight of the evidence does prove all of these elements, then you must consider the Kuipers' claim for "damages" for "failure to test," as damages are explained in Instructions Nos. 12, 13, and 14.

INSTRUCTION NO. 11 - PLAINTIFFS' CLAIMS: LOSS OF SPOUSAL CONSORTIUM

The Kuipers' last claim is a claim by Conley Kuiper for loss of spousal consortium, that is, a claim for injury to her relationship with her husband, Ronald Kuiper. Givaudan denies this claim.

For Conley Kuiper to win her claim of "loss of spousal consortium," she must prove all of the following elements by the greater weight of the evidence:

***One*, the Kuipers have prevailed on one or more of their "defective design," "failure to warn," and "failure to test" claims.**

> A spouse can only recover for "loss of spousal consortium" if the loss of spousal consortium is caused by some other wrongful conduct of the defendant. Thus, for Conley Kuiper to recover for loss of spousal consortium, the Kuipers must first prevail on one or more of the following claims: "Defective design," as explained in Instruction No. 8; "failure to warn," as explained in Instruction No. 9; and "failure to test," as explained in Instruction No. 10. If the Kuipers have not prevailed on one or more of these claims, then Conley Kuiper is not entitled to damages on her claim of "loss of spousal consortium."

***Two*, Conley Kuiper has been deprived of the spousal consortium of Ronald Kuiper.**

> "Spousal consortium" is the fellowship of a husband and wife, including the company, cooperation, affection, and aid they give to each other as a part of their marital relationship. It also includes the general usefulness,

> industry, and attention of a spouse within the home and family. It does not include any loss of financial support from the injured spouse or mental anguish caused by the spouse's injury.

***Three*, the injuries suffered by Ronald Kuiper as a result of Givaudan's "defective design," "failure to warn," or "failure to test" were a proximate cause of Conley Kuiper's loss of spousal consortium.**

> "Proximate cause" was defined for you in Instruction No. 6.

If the greater weight of the evidence does not prove all of these elements, then you must find in favor of Givaudan on Conley Kuiper's "loss of spousal consortium" claim. On the other hand, if the greater weight of the evidence does prove all of these elements, then you must consider Conley Kuiper's claim for "damages" for "loss of spousal consortium," as damages for "loss of spousal consortium" are explained in Instructions Nos. 12 and 13.

INSTRUCTION NO. 12 - DAMAGES: IN GENERAL

The fact that I am instructing you on the proper measure of damages should not be considered as an indication that I have any view as to whether the Kuipers are entitled to your verdict on any claim in this case or whether Givaudan is entitled your verdict on any of its defenses. Instructions as to the measure of damages are given only for your guidance in the event that you should find that the Kuipers are entitled to damages in accord with the other instructions. If you find in favor of the Kuipers on any of their claims, then you must consider their damages without regard to Givaudan's defenses.

The Kuipers seek both "compensatory" damages, to compensate them for injuries proximately caused by Givaudan's wrongful conduct, and "punitive" damages, to punish Givaudan and to discourage Givaudan and others from like conduct in the future.

You must not award compensatory damages under these Instructions by way of sympathy or punishment. Remember that, throughout your deliberations on damages, as on all other issues, you must not engage in any speculation, guess, or conjecture. Your judgment must not be exercised arbitrarily or out of sympathy or prejudice for or against any of the parties.

In arriving at an amount for any particular item of compensatory or punitive damages, you cannot establish a figure by taking down the estimate of each juror as to damages and agreeing in advance that the average of those estimates shall be your

award of damages. Rather, you must use your sound judgment based upon an impartial consideration of the evidence.

You may award future compensatory damages if the Kuipers have proved by the greater weight of the evidence that the damages proximately caused by Givaudan's wrongful conduct are reasonably certain to extend into the future. Any future compensatory damages must be reduced to "present value." "Present value" is a sum of money paid now, in advance, that, together with interest earned at a reasonable rate of return, will compensate a plaintiff for future losses. Future damages must also be limited to the normal life expectancy of the injured party. A Standard Mortality Table indicates the normal life expectancy of people who are the same age as Ronald Kuiper is 83.4 years (life extending to May 27, 2023), and the normal life expectancy of people who are the same age as Conley Kuiper is 84.8 years (life extending to November 25, 2029). The statistics from a Standard Mortality Table are not conclusive. You may use this information, together with all the other evidence about Ronald and Conley Kuiper's health, habits, occupation, and lifestyle when deciding issues of future compensatory damages.

A party cannot recover duplicate compensatory damages. Do not allow amounts awarded under one item of compensatory damage to be included in any amount awarded under another item of compensatory damage. Also, you will only consider whether to award the items of compensatory damages listed once, for all claims on which you find that the Kuipers have prevailed, to avoid duplication of compensatory damages among claims.

You must award the full amount of compensatory damages, if any, proximately caused by Givaudan's wrongful conduct that are proved by the greater weight of the evidence. However, if you find that Mr. Kuiper had a condition before the time of an injury that was allegedly caused by Givaudan's wrongful conduct, and that this pre-existing condition was aggravated by the injury that Mr. Kuiper alleges was caused by Givaudan's wrongful conduct, then Mr. Kuiper is only entitled to recover damages caused by Givaudan's aggravation of the pre-existing condition. Mr. Kuiper is not entitled to recover for any physical ailment or disability that existed before Givaudan's wrongful conduct or for any injuries or damages that Mr. Kuiper now has that were not caused by Givaudan's wrongful conduct. Similarly, if you find that Mr. Kuiper was injured by another act or incident after Givaudan's wrongful conduct ceased, then he cannot recover for any later injury not caused by Givaudan's wrongful conduct.

Iowa law also prohibits any award of damages for claims for "defective design," "failure to warn," or "failure to test" that are brought more than fifteen years after the product in question was purchased. Therefore, you cannot award damages for any injury to the Kuipers that resulted from exposure to butter flavorings before January 31, 1991.

Attached to these Instructions is a Verdict Form, which you must fill out. Again, in the "damages" section of the Verdict Form for the Kuipers' claims, you should only award those damages, if any, that are proved by the greater weight of the evidence.

INSTRUCTION NO. 13 - DAMAGES: COMPENSATORY DAMAGES

Damages For Injuries To Ronald Kuiper

If you find for the Kuipers on one or more of their claims for "defective design," "failure to warn," and "failure to test," then you must award the Kuipers the amount you find by the greater weight of the evidence will fairly and justly compensate them for any damages that Ronald Kuiper sustained as a proximate result of the acts or omissions of Givaudan. The Kuipers seek various kinds of damages that they allege were proximately caused to Ronald Kuiper by Givaudan's wrongful conduct. You must consider each kind of damages separately. Again, you must consider the Kuipers' damages without regard to Givaudan's defenses.

Past and future medical expenses: You may award damages for the reasonable value of past necessary hospital charges, doctor charges, prescriptions, and other medical services provided to Ronald Kuiper from the date of the injury to the present time for injuries proximately caused by Givaudan's wrongful conduct. In determining the reasonable cost of necessary hospital charges, doctor charges, prescriptions, and other medical services you may consider the amount charged, the amount actually paid, or any other evidence of what is reasonable and proper for such medical expense. You may also award damages for the present value of reasonable and necessary hospital charges, doctor charges, prescriptions, and other medical services that he will incur in the future for injuries proximately caused by Givaudan's wrongful conduct.

Past and future loss of function of the mind and body: You may award damages for the reasonable value of loss of function of Ronald Kuiper's mind or body, or both, from the date of injury to the present time proximately caused by Givaudan's wrongful conduct. Loss of mind or body is the inability of a particular part of the mind or the body to function in a normal manner. You may also award damages for the present value of future loss of function of Ronald Kuiper's mind or body, or both, proximately caused by Givaudan's wrongful conduct.

Past and future pain and suffering: You may award damages for any physical and mental pain suffered by Ronald Kuiper from the date of the injury to the present time, proximately caused by Givaudan's wrongful conduct. Physical pain and suffering may include, but is not limited to, bodily suffering or discomfort. Mental pain and suffering may include, but is not limited to, mental anguish or loss of enjoyment of life. You may also award damages for the present value of Ronald Kuiper's future physical and mental pain and suffering proximately caused by Givaudan's wrongful conduct.

Damages For Conley Kuiper's Loss Of Spousal Consortium

If you find that Conley Kuiper is entitled to recover damages for loss of spousal consortium, as that claim is explained in Instruction No. 11, then you must award her the amount that you find by the greater weight of the evidence will fairly and justly compensate her for loss of spousal consortium proximately caused by Ronald Kuiper's injuries as the result of Givaudan's wrongful conduct. Again, you must consider Conley Kuiper's damages without regard to Givaudan's defenses.

You may award damages for the reasonable value of the loss to spousal consortium that Conley Kuiper would otherwise have received from the date of injury until the present time. You may also award the present value of the loss of spousal consortium that Conley Kuiper would otherwise have received in the future. Damages for loss of spousal consortium are limited in time to the shorter of Conley Kuiper's or Ronald Kuiper's normal life expectancy.

In determining the value for loss of spousal consortium you may consider the following factors: (a) the circumstances of Ronald Kuiper's life; (b) Conley Kuiper's and Ronald Kuiper's ages at the time of Ronald Kuiper's injury; (c) Ronald Kuiper's health, strength, character, and life expectancy; (e) Ronald Kuiper's capabilities and efficiencies in performing his duties as a spouse; (f) Ronald Kuiper's skills and abilities in providing instructions, guidance, advice and assistance; (g) Conley Kuiper's needs; and (h) all other facts and circumstances bearing on this issue.

The amount that you assess for loss of spousal consortium cannot be measured by any exact or mathematical standard. However, the amount that you assess for loss of spousal consortium must not exceed the amount proximately caused by Ronald Kuiper's injuries as the result of Givaudan's wrongful conduct.

INSTRUCTION NO. 14 - DAMAGES: PUNITIVE DAMAGES

Purpose of punitive damages

In addition to compensatory damages, as described in Instruction No. 13, the law permits the jury, under certain circumstances, to award punitive damages. Punitive damages are not intended to compensate for injury, but are allowed to punish the defendants and to discourage the defendants and others from like conduct in the future.

Eligibility for punitive damages

You must consider whether or not to award punitive damages on the Kuipers' "defective design," "failure to warn," and "failure to test" claims. You cannot award punitive damages on Conley Kuiper's "loss of spousal consortium" claim, however, even if she prevails on that claim, because there is no additional wrongful conduct of Givaudan at issue in that claim to punish. You must consider whether or not to award punitive damages on each claim separately. Punitive damages can only be awarded on a particular claim if the Kuipers prove by the greater weight of clear, convincing, and satisfactory evidence that such damages are warranted for the wrongful conduct at issue in that claim. Evidence is "clear, convincing, and satisfactory" if there is no serious or substantial uncertainty about the conclusion to be drawn from it.

To establish that they are eligible to receive punitive damages on a particular claim, the Kuipers must prove the following as to that claim by the greater weight of clear, convincing, and satisfactory evidence:

***One*, the wrongful conduct of Givaudan at issue in the claim in question constituted willful and wanton disregard for the rights or safety of another.**

> Conduct is "willful and wanton" when a person intentionally does an act of an unreasonable character in disregard of a known or obvious risk that is so great as to make it highly probable that harm will follow.

***Two*, the wrongful conduct of Givaudan at issue in the claim in question caused actual damage to Ronald Kuiper.**

> You can only award punitive damages if you first find that Givaudan's wrongful conduct caused actual damage to Ronald Kuiper and you award compensatory damages to compensate him for such actual damage pursuant to Instruction No. 13.

Unless the Kuipers have proved both of these elements by the greater weight of clear, convincing, and satisfactory evidence as to a particular claim, they are not eligible to receive punitive damages on that claim. However, if they have proved both of these elements by the greater weight of clear, convincing, and satisfactory evidence as to a particular claim, then you may, but are not required to, award punitive damages in some amount on that claim.

Amount of punitive damages

If you find that the Kuipers are eligible to receive punitive damages on a particular claim, as eligibility for punitive damages is explained above, then you must determine what amount, if any, of punitive damages to award for Givaudan's wrongful conduct at issue in that claim. You may award the same or different amounts of punitive damages for each claim, some punitive damages on some claims and none on others, or none at all on any claim.

There is no exact rule to determine the amount of punitive damages, if any, that you should award. However, in determining the amount of punitive damages, if any, to award for Givaudan's wrongful conduct at issue in a particular claim, you may consider all the evidence including the following: (1) the nature of Givaudan's wrongful conduct at issue in that claim; (2) the amount of punitive damages that will punish and discourage like conduct in view of Givaudan's financial condition; (3) the amount of punitive damages that is reasonable in relation to Ronald Kuiper's actual damages; and (4) the existence and frequency of prior similar conduct, although you may not award punitive damages to punish Givaudan for harm caused to others, or for out-of-state conduct that was lawful where it occurred, or for any conduct by Givaudan that is not similar to the conduct that caused the harm to Ronald Kuiper in this case.

Conduct directed specifically at Ronald Kuiper

In addition, if you award the Kuipers punitive damages against Givaudan on a particular claim, then you will be asked to indicate in the Verdict Form whether

the wrongful conduct of Givaudan at issue in that claim was directed specifically at Ronald Kuiper. You need not be concerned with the effect of your determination on this question, because the effect of your determination on this question is for me to decide.

INSTRUCTION NO. 15 - GIVAUDAN'S DEFENSES: IN GENERAL

Givaudan asserts various defenses to the Kuipers' claims: that the Kuipers waited too long to file their claims; that its butter flavorings met the "state of the art" at the time that they were sold; that Ronald Kuiper's employer, American Pop Corn Company, was a "sophisticated user" of butter flavorings and, therefore, was responsible for providing warnings about the safe usage of such products; and that Ronald Kuiper and others were at fault for his injuries. Unless I tell you otherwise, you must determine whether Givaudan has proved each defense without regard to any other claim or defense. You should not concern yourselves with the effect of your determination on any defense or consider that determination in making any other determination in this case. I will determine the effect of your determinations on each of Givaudan's defenses.

INSTRUCTION NO. 16 - GIVAUDAN'S DEFENSES: UNTIMELINESS

Givaudan's first defense to the Kuipers' claims is that the Kuipers waited too long to file their claims. The Kuipers deny that their claims are untimely.

To prove that the Kuipers' claims are untimely, Givaudan must prove the following by the greater weight of the evidence:

The Kuipers's claims were brought more than two years after their claims accrued.

> Iowa law requires claims for injuries to the person, such as those asserted by the Kuipers, to be brought within two years after such claims "accrue." The Kuipers brought their claims on January 30, 2006. Therefore, to prove that the Kuipers' claims are untimely, Givaudan must prove by the greater weight of the evidence that the Kuipers' claims "accrued" before January 30, 2004.
>
> A claim "accrued" when the plaintiff knew that his or her claimed injuries may have been caused by the defendant's conduct. A claim also "accrued" when a party had "inquiry notice" of his or her claim. A party is placed on "inquiry notice" when a person gains sufficient knowledge of facts that would put that person on notice of the existence of a problem or potential problem. On that date, a person is charged with knowledge of facts that would have been disclosed by a reasonably diligent investigation. Once a person is aware that a problem exists, the person has a duty to investigate, even though the person may not have knowledge of the nature of the problem that caused the injury. Thus, a claim "accrued" when a party knew, or in the exercise of reasonable

> diligence should have known, that his or her claimed injuries may have been caused by the defendant's conduct.
>
> Therefore, in this case, the Kuipers' claims accrued when they knew, or by the exercise of reasonable diligence should have known, that Ronald Kuiper's claimed injuries may have been caused by exposure to Givaudan's butter flavorings containing diacetyl in the "mixing room" at American Pop Corn Company.

If the greater weight of the evidence shows that the Kuipers' claims are untimely, then you must so indicate on the Verdict Form. I will determine the effect of the untimeliness of the Kuipers' claims.

INSTRUCTION NO. 17 - GIVAUDAN'S DEFENSES: STATE OF THE ART

Givaudan's second defense to the Kuipers' claims is that its butter flavorings containing diacetyl met the "state of the art" at the time that they were sold. The Kuipers deny that Givaudan's butter flavorings containing diacetyl met the "state of the art" at the time that they were sold.

To prove its "state of the art" defense, Givaudan must prove the following by the greater weight of the evidence:

Givaudan's butter flavorings containing diacetyl conformed to the "state of the art" at the time of Ronald Kuiper's injury.

> The "state of the art" is the safest and most advanced technology and the most current scientific knowledge that reasonably could have been used in the design of butter flavorings at the time that they were manufactured. In determining whether the design of Givaudan's butter flavorings containing diacetyl was "state of the art," you should consider whether the butter flavoring industry, using the technology and scientific knowledge that existed at the time, could feasibly, practically, and economically have designed a butter flavoring that would have prevented Ronald Kuiper's injuries while, at the same time, meeting the needs of butter flavoring users generally. Custom in the industry is not necessarily the "state of the art," nor is every alternative design for which technology exists necessarily feasible, so that a design for which technology exists, but that is not feasible, is not "state of the art."

If the greater weight of the evidence shows that Givaudan's butter flavorings containing diacetyl were "state of the art," then you must so indicate on the Verdict Form. I will determine the effect of that determination on the Kuipers' claims.

INSTRUCTION NO. 18 - GIVAUDAN'S DEFENSES: SOPHISTICATED USER

Givaudan's third defense to the Kuipers' claims is that Ronald Kuiper's employer, American Pop Corn Company, was a "sophisticated user" of butter flavorings and, therefore, was responsible for providing warnings about safe usage of such products to its employees, such as Ronald Kuiper. The Kuipers deny that American Pop Corn Company was a "sophisticated user" of butter flavorings.

To prove its "sophisticated user" defense, Givaudan must prove the following by the greater weight of the evidence:

***One*, American Pop Corn Company knew or should have known of the potential dangers of butter flavorings containing diacetyl.**

> Givaudan did not have a duty to warn American Pop Corn Company of the potential dangers of butter flavorings containing diacetyl if American Pop Corn Company already knew or could reasonably have been expected to know of the dangers of butter flavorings containing diacetyl. Givaudan did not have a duty to warn, if American Pop Corn Company appreciated the risk involved in the use of butter flavorings containing diacetyl and was familiar with such products. Thus, evidence that, because of the nature of its business, American Pop Corn Company should have been aware of the characteristics of butter flavorings containing diacetyl is evidence that American Pop Corn could reasonably have been expected to know of the dangers of butter flavorings containing diacetyl.

***Two*, American Pop Corn Company was in a better position than Givaudan to warn American Pop Corn Company's employees of the potential dangers of butter flavorings containing diacetyl.**

> American Pop Corn Company was in a better position to convey warnings to its employees about the potential dangers of butter flavorings containing diacetyl, if (a) Givaudan did not have the opportunity to convey warnings directly to American Pop Corn Company's employees, because, for example, Givaudan delivered its butter flavorings in bulk rather than in labeled containers, or Givaudan otherwise did not have direct contact with American Pop Corn Company's employees, *and* (b) it was reasonable for Givaudan to rely on American Pop Corn Company's knowledge of the dangers of butter flavorings containing diacetyl, owing to the state of common knowledge in the industry concerning the potential dangers of using, handling, and inhaling butter flavorings generally or butter flavorings containing diacetyl specifically.

If the greater weight of the evidence shows that American Pop Corn Company was a "sophisticated user," then you must so indicate on the Verdict Form. I will determine the effect of that determination on the Kuipers' claims.

INSTRUCTION NO. 19 - GIVAUDAN'S DEFENSES: COMPARATIVE FAULT IN GENERAL

As its fourth defense, Givaudan contends that Ronald Kuiper and certain "Released Parties" were at fault and that their fault limits or eliminates Givaudan's fault for Ronald Kuiper's injuries. The Kuipers deny that Ronald Kuiper is at fault for his injuries.

Damages may be the "fault" of more than one person. "Fault" means one or more acts or omissions toward the person of the actor or of another that constitute defective design, failure to warn, failure to test, unreasonable assumption of the risk, unreasonable failure to avoid injury, or unreasonable failure to mitigate damages.

Under Iowa law, you must compare the fault, if any, of Ronald Kuiper, Givaudan, and the "Released Parties." The "Released Parties" are other makers of butter flavorings against whom the Kuipers have released their claims. The "Released Parties" are Flavors of North America, Inc. (FONA), International Flavors & Fragrances, Inc. (IFF), and Sensient Flavors, Inc. (Sensient). In comparing fault, you should consider all of the surrounding circumstances as shown by the evidence, together with the conduct of the parties in question and the extent of the causal relation between their conduct and the damages claimed. You should then determine what percentage, if any, each person's fault contributed to the damages.

INSTRUCTION NO. 20 - GIVAUDAN'S DEFENSES: COMPARATIVE FAULT OF RONALD KUIPER

As part of its "comparative fault" defense, Givaudan contends that Ronald Kuiper was at fault and that his fault limits or eliminates Givaudan's fault for his injuries. Givaudan contends that Ronald Kuiper was at fault for unreasonably assuming the risk of injury from butter flavorings containing diacetyl, unreasonably failing to avoid injury, and unreasonably failing to mitigate his damages. The Kuipers deny that Ronald Kuiper is at fault for his injuries. I will explain, below, the elements that Givaudan must prove to establish each kind of fault of Ronald Kuiper that Givaudan alleges. However, I must first explain the effect of a finding that Ronald Kuiper was at fault.

Effect Of Plaintiff's Fault

After you have compared the conduct of all parties, you will indicate the percentage of fault, if any, of each party in the Verdict Form. If you find that Ronald Kuiper was at fault and that his fault was more than 50% of the total fault, then I will bar the Kuipers from recovering any of the damages that you have awarded. On the other hand, if you find that Ronald Kuiper's fault, if any, was 50% or less of the total fault, then I will reduce the total of any damages that you have awarded by the percentage of Ronald Kuiper's fault.

Kinds Of Fault

I will now explain the elements that Givaudan must prove to establish each kind of fault of Ronald Kuiper that Givaudan alleges.

Unreasonable assumption of the risk

To prove that Ronald Kuiper was at fault because he unreasonably assumed the risk of injury, Givaudan must prove all of the following by the greater weight of the evidence:

***One*, Ronald Kuiper knew that the risk of butter flavorings containing diacetyl was present.**

***Two*, Ronald Kuiper understood the nature of the risk to himself from butter flavorings containing diacetyl.**

***Three*, Ronald Kuiper nevertheless unreasonably, freely, and voluntarily took the risk of exposure to butter flavorings containing diacetyl.**

> Givaudan asserts that Ronald Kuiper assumed the risk of exposure to butter flavorings containing diacetyl in one or more of the following ways: (a) failing to follow the safety rules, policies, and procedures of American Pop Corn; (b) failing to stop working in the mixing room after associating his respiratory condition with his work; (c) failing to use respirators and other protective devices as recommended and/or required in product instructions and/or warnings; and (d) failing to comply with the advice, recommendations, and instructions of his doctors.

***Four*, Ronald Kuiper's assumption of the risk was a proximate cause of his damage.**

> "Proximate cause" was defined for you in Instruction No. 6.

If Givaudan has failed to prove these elements, then Givaudan has not proved that Ronald Kuiper is at fault for unreasonable assumption of the risk. On the other hand, if Givaudan has proved these elements, then Ronald Kuiper was at fault for unreasonable assumption of the risk, and you must assign him some percentage of fault in the Verdict Form.

Unreasonable failure to avoid injury

To prove that Ronald Kuiper was at fault because he unreasonably failed to avoid injury, Givaudan must prove the following by the greater weight of the evidence:

***One*, Ronald Kuiper failed to exercise reasonable care for his own safety.**

> A party is required to exercise reasonable care for his or her own safety. This means that, if, in the exercise of ordinary care under the circumstances, a party could have taken some particular action after an act of fault of another party, in order to avoid an injury, then that party is under a duty to take such action.
>
> In this case, Givaudan asserts that Ronald Kuiper unreasonably failed to take action to avoid injury in one or more of the following ways: (a) failing to follow the safety rules, policies, and procedures of American Pop Corn; (b) failing to read the instructions or warnings contained in Material Data Safety Sheets and labels that

> accompanied Givaudan's diacetyl-containing butter flavors; (c) failing to stop working in the mixing room after associating his respiratory condition with his work; and (d) failing to comply with the advice, recommendations, and instructions of his doctors.

***Two*, Ronald Kuiper's failure to exercise reasonable care to avoid injury was a proximate cause of his damage.**

> "Proximate cause" was defined for you in Instruction No. 6.

If Givaudan has failed to prove these elements, then Givaudan has not proved that Ronald Kuiper is at fault for unreasonably failing to avoid injury. On the other hand, if Givaudan has proved these elements, then Ronald Kuiper was at fault for unreasonably failing to avoid injury, and you must assign him some percentage of fault in the Verdict Form.

Unreasonable failure to mitigate damages

To prove that Ronald Kuiper was at fault because he unreasonably failed to mitigate his damages, Givaudan must prove the following by the greater weight of the evidence:

***One*, Ronald Kuiper could have done something to mitigate his damages.**

> A party has a duty to exercise ordinary care to reduce, minimize, or limit his damages. Exercising such ordinary care is called "mitigating" damages. Givaudan contends that Ronald Kuiper could have mitigated his damages by doing one or more the following: (a) exercising ordinary care; (b) taking reasonable steps to protect himself on the job; (c) complying with the advice,

> recommendations, and instructions of his doctors; and (d) not continuing to work in the mixing room after associating respiratory symptoms with his work.

***Two*, requiring Ronald Kuiper to take the mitigating action was reasonable under the circumstances.**

> A party does not have a duty to do something that was unreasonable under the circumstances.

***Three*, Ronald Kuiper acted unreasonably in failing to undertake the mitigating action.**

***Four*, Ronald Kuiper's failure to undertake the mitigating action was the proximate cause of an identifiable portion of his damages.**

> "Proximate cause" was defined for you in Instruction No. 6.

If Givaudan has failed to prove these elements, then Givaudan has not proved that Ronald Kuiper is at fault for unreasonably failing to mitigate damages. On the other hand, if Givaudan has proved these elements, then Ronald Kuiper was at fault for unreasonably failing to mitigate damages, and you must assign him some percentage of fault in the Verdict Form.

INSTRUCTION NO. 21 - GIVAUDAN'S DEFENSES: COMPARATIVE FAULT OF RELEASED PARTIES

As part of its "comparative fault" defense, Givaudan also contends that the "Released Parties" were at fault and that their fault limits or eliminates Givaudan's fault for Ronald Kuiper's injuries. Givaudan contends that, if it is found to be at fault as a result of its warnings, the "Released Parties" were also at fault for failing to warn of the hazardous health effects of butter flavorings containing diacetyl that they provided to American Pop Corn Company and to which Ronald Kuiper was exposed. I will explain, below, the elements that Givaudan must prove to establish the fault of the "Released Parties." However, I must first explain the effect of a finding that a "Released Party" was at fault.

Effect Of A Released Party's Fault

After you have compared the conduct of all parties, you will indicate the percentage of fault, if any, of any "Released Party" in the verdict form. I will reduce the total of any damages that you have awarded by the percentage of any "Released Party's" fault and award the Kuiper's only damages based on defendant Givaudan's percentage of fault.

Released Party's Fault For Failure To Warn

To prove that a "Released Party" was at fault, Givaudan must prove the following by the greater weight of the evidence:

One, **the "Released Party" in question was at fault.**

> To prove that a Released Party is at fault for "failure to warn," Givaudan must prove the elements explained in Instruction No. 9, on the Kuipers' "failure to warn" claim, as to that Released Party.

Two**, the fault of the "Released Party" in question was a proximate cause of Ronald Kuiper's damage.**

> "Proximate cause" was defined for you in Instruction No. 6.

If Givaudan has failed to prove these elements as to a particular "Released Party," then Givaudan has not proved that that "Released Party" is at fault for Ronald Kuiper's damages. On the other hand, if Givaudan has proved these elements as to a particular "Released Party," then that "Released Party" was at fault, and you must assign that "Released Party" some percentage of fault in the Verdict Form.

INSTRUCTION NO. 22 - ORDER OF TRIAL

I will now explain how the trial will proceed.

After I have read all but the last Instruction, the Kuipers' lawyer may make an opening statement. Next, the lawyer for Givaudan may make an opening statement. An opening statement is not evidence, but simply a summary of what the lawyer expects the evidence to be.

After opening statements, the Kuipers will present evidence and call witnesses and the lawyer for Givaudan may cross-examine them. Following the Kuipers' case, Givaudan may present evidence and call witnesses, and the lawyer for the Kuipers may cross-examine those witnesses.

After the evidence is concluded, the lawyers will make their closing arguments to summarize and interpret the evidence for you. As with opening statements, closing arguments are not evidence.

Following the parties' closing arguments, I will give you the last Instruction, on "deliberations," and you will retire to deliberate on your verdict.

I will now give you some Instructions on conduct of the trial.

INSTRUCTION NO. 23 - OBJECTIONS

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

INSTRUCTION NO. 24 - BENCH CONFERENCES

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

INSTRUCTION NO. 25 - NOTE-TAKING

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember that it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

INSTRUCTION NO. 26 - CONDUCT OF JURORS DURING TRIAL

You will not be required to remain together while court is in recess. However, you must decide this case based ***solely*** on the evidence presented in court, in light of your own observations, experiences, reason, and common sense. Therefore, to insure fairness, you, as jurors, must obey the following rules:

First, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

Second, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it, or about any news story, rumor, or gossip about this case, and do not let anyone ask you about your participation in this case until the trial has ended and I have accepted your verdict. If someone should try to talk to you about the case during the trial, please report it to me.

Fourth, during the trial, you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply

to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

Fifth, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it, or let anyone tell you anything about any such news reports. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

Sixth, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own. You must decide this case based on the evidence presented in court.

Seventh, do not make up your mind during the trial about what the verdict should be. Do not discuss this case with anyone, not even with other jurors, until I send you to the jury room for deliberations after closing arguments. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

Eighth, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to me. I want you to be comfortable, so please do not hesitate to inform me of any problem.

I will reserve the last instruction, on deliberations, until after the presentation of evidence and closing arguments.

INSTRUCTION NO. 27 - DELIBERATIONS

In conducting your deliberations and returning your verdict, there are certain rules that you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment. Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors. Do not be afraid to change your opinions if the discussion persuades you that you should, but do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not advocates, you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically*.

Fourth, your verdict must be based solely on the evidence and on the law as I have given it to you in my instructions. Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

Finally, I am giving you the Verdict Form. A Verdict Form is simply the written notice of the decision that you reach in this case. *Your verdict on each question submitted to you must be unanimous*. You will take the Verdict Form to the jury room. When you have reached a unanimous verdict on each question submitted to you, your foreperson must complete one copy of the Verdict Form and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed Verdict Form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom

DATED this 17th day of February, 2009.

Mark W. Bennett

MARK W. BENNETT
U. S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

RONALD KUIPER and CONLEY KUIPER, Plaintiffs, vs. GIVAUDAN FLAVORS CORP., Defendant.	No. C 06-4009-MWB **VERDICT FORM**

On the Kuipers' claims and Givaudan's defenses in this action, we, the Jury, find as follows:

I. THE KUIPERS' CLAIMS		
Step 1: Verdicts		
On each of the Kuipers' claims, in whose favor do you find?		
(a) The claim of "defective design," as explained in Instruction No. 8	___ The Kuipers	___ Givaudan
(b) The claim of "failure to warn," as explained in Instruction No. 9	___ The Kuipers	___ Givaudan
(c) The claim of "failure to test," as explained in Instruction No. 10	___ The Kuipers	___ Givaudan
(d) Conley Kuiper's claim of "loss of spousal consortium," as explained in Instruction No. 11 (*Remember that you cannot find in favor of the Kuipers on this claim unless you have found in their favor on one or more of the claims in* ***Steps 1(a), (b),*** *and* ***(c)****.*)	___ The Kuipers	___ Givaudan

Step 2: Compensatory Damages	
(a) *If you found for the Kuipers on one or more of the claims identified in* ***Steps 1(a), (b),*** *and* ***(c)***, what amount of damages, if any, do you find for each of the following items of compensatory damages, as compensatory damages are explained in Instruction No. 13?	
Past medical expenses	$
Future medical expenses (reduced to present value)	$
Past loss of function of the mind and body	$
Future loss of function of the mind and body (reduced to present value)	$
Past pain and suffering	$
Future pain and suffering (reduced to present value)	$
(b) *If you found for Conley Kuiper on her "loss of spousal consortium" claim in* ***Step 1(d),*** what amount of compensatory damages, if any, do you award for "loss of spousal consortium," as such compensatory damages are explained in Instruction No. 13?	
The reasonable value of past loss of spousal consortium	$
The reasonable value of future loss of spousal consortium (reduced to present value)	$
Step 3: Punitive Damages	
If you found for the Kuipers on one or more of the claims identified in ***Steps 1(a), (b),*** *and* ***(c)***, what amount, if any, do you award as punitive damages on each such claim, as punitive damages are explained in Instruction No. 14? (*You cannot award punitive damages on Conley Kuiper's "loss of spousal consortium" claim, even if she prevailed on that claim, because there is no additional wrongful conduct of Givaudan to punish in that claim. If you enter an amount of punitive damages on a claim, please indicate whether the conduct of Givaudan at issue in that claim was directed specifically at plaintiff Ronald Kuiper. You need not be concerned with the effect of your determination on this question, because the effect of your determination on this question is for me to decide*.)	
(a) The claim of "defective design," as explained in Instruction No. 8. Was the conduct at issue in this claim directed specifically at plaintiff Ronald Kuiper? ___ Yes or ___ No	$
(b) The claim of "failure to warn," as explained in Instruction No. 9. Was the conduct at issue in this claim directed specifically at plaintiff Ronald Kuiper? ___ Yes or ___ No	$
(c) The claim of "failure to test," as explained in Instruction No. 10. Was the conduct at issue in this claim directed specifically at plaintiff Ronald Kuiper? ___ Yes or ___ No	$

II. GIVAUDAN'S DEFENSES	
Step 1: Untimeliness	
Has Givaudan proved by the greater weight of the evidence that the Kuipers' claims "accrued" before January 30, 2004, as Givaudan's "untimeliness" defense is explained in Instruction No. 16?	___ Yes ___ No
Step 2: State Of The Art	
Has Givaudan proved by the greater weight of the evidence that Givaudan's butter flavorings containing diacetyl were "state of the art," as Givaudan's "state of the art" defense is explained in Instruction No. 17?	___ Yes ___ No
Step 3: Sophisticated User	
Has Givaudan proved by the greater weight of the evidence that Ronald Kuiper's employer, American Pop Corn Company, was a "sophisticated user" of butter flavorings and, therefore, was responsible for providing warnings about safe usage of such products to its employees, such as Ronald Kuiper, as Givaudan's "sophisticated user" defense is explained in Instruction No. 18?	___ Yes ___ No
Step 4: Comparative Fault	
(a) Fault of the Plaintiff:	
(i) Has Givaudan proved by the greater weight of the evidence that plaintiff Ronald Kuiper was at fault, as "comparative fault of the plaintiff" is explained in Instruction No. 20? (*If you answer "yes," indicate in **(ii)** below which one or more kinds of fault of plaintiff Ronald Kuiper Givaudan has proved and indicate in **(iii)** the percentage of the total fault that you assign to plaintiff Ronald Kuiper.*)	___ Yes ___ No
(ii) Kind(s) of fault:	
_____ Unreasonable assumption of the risk	
_____ Unreasonable failure to avoid injury	
_____ Unreasonable failure to mitigate damages	
(iii) Percentage of total fault that you assign to plaintiff Ronald Kuiper. (*Remember that if you assign Ronald Kuiper more than 50% of the total fault, then I will bar the Kuipers from recovering any of the damages that you have awarded, and if you assign Ronald Kuiper 50% or less of the total fault, then I will reduce the total of any damages that you have awarded by the percentage of Ronald Kuiper's fault.*)	%

(b) Fault of Released Parties:	
(i) Has Givaudan proved by the greater weight of the evidence that one or more "Released Parties" were at fault for Ronald Kuiper's injuries for failing to warn of the hazardous health effects of butter flavorings containing diacetyl that they provided to American Pop Corn Company and to which Ronald Kuiper was exposed, as "comparative fault of Released Parties" is explained in Instruction No. 21? (*If you answer "yes," indicate in **(ii)** below which one or more of the "Released Parties" Givaudan has proved was at fault for plaintiff Ronald Kuiper's injuries and indicate in **(iii)** the percentage of the total fault that you assign to each such "Released Party."*)	___ Yes ___ No
(ii) "Released Party or Parties" at fault and **(iii)** their percentage of fault	
_____ Flavors of North America, Inc. (FONA)	%
_____ International Flavors & Fragrances, Inc. (IFF)	%
_____ Sensient Flavors, Inc. (Sensient)	%
(c) Fault of Givaudan:	
If you found for the Kuipers on one or more of their claims against Givaudan for "defective design," "failure to warn," and "failure to test," what percentage of the total fault for Ronald Kuiper's injuries do you assign to Givaudan?	%
(d) Total of percentages of fault assigned (Must equal 100%) (*Please total the percentages of fault you entered in **Step 4(a)(iii)** (plaintiff's fault), **(b)(iii)** (fault of Released Parties), and **(c)** (Givaudan's fault). The total must equal 100%.*)	%

Date: _____ **Time**: _____

_____ _____
Foreperson Juror

_____ _____
Juror Juror

_____ _____
Juror Juror

_____ _____
Juror Juror